

1 Sarah R. London (State Bar No. 267083)
slondon@lchb.com
2 Tiseme G. Zegeye (State Bar No. 319927)
tzegeye@lchb.com
3 Caitlin M. Woods (State Bar No. 335601)
cwoods@lchb.com
4 Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
5 San Francisco, CA 94111-3339
Telephone: 415.956.1000
6 Facsimile: 415.956.1008

7 Hannah R. Lazarz (pro hac vice forthcoming)
8 hlazarz@lchb.com
9 Lieff Cabraser Heimann & Bernstein, LLP
10 222 2nd Avenue South, Suite 1640
 Nashville, TN 37201-2379
 Telephone: 615.313.9000
 Facsimile: 615.313.9965

11 | *Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

15 || A.A.,

Case No. 4:24-CV-02582

16 Plaintiff,

**NOTICE OF MOTION AND MOTION
FOR LEAVE TO PROCEED UNDER
PSEUDONYMS**

18 THE COOPER COMPANIES, INC.;
19 COOPERSURGICAL, INC.; and DOES 1-
10, inclusive.

20 Defendants.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Plaintiff A.A. will and hereby does move for entry of an order granting Plaintiff leave to proceed under pseudonyms. A copy of Plaintiff's [Proposed] Order Granting Plaintiff Leave to Proceed Under Pseudonyms is submitted along with this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff hereby moves to proceed in this case under the pseudonyms “A.A.” This case involves highly sensitive personal and private information about Plaintiff, her reproductive efforts, fertility treatments, and medical history. The highly sensitive and personal nature of Plaintiff’s allegations and the lack of prejudice to Defendants, all weigh in favor of allowing Plaintiff to proceed anonymously. Plaintiff respectfully submits that this motion should be granted.

II. BACKGROUND

Plaintiff A.A. is a single woman who sought fertility treatments to achieve her dream of becoming a biological mother. Complaint (Dkt. 1) ¶ 2. She underwent an egg retrieval in November 2023, and five healthy eggs were inseminated and placed in Defendants CooperSurgical, Inc. and CooperCompanies (“Defendants”)’s defective culture media. *Id.* ¶¶ 3, 5. Plaintiff was shattered when she learned that none of her fertilized eggs survived the incubation period to develop into healthy blastocysts. *Id.* ¶ 4. Defendants later issued a recall of the media used during Plaintiff’s embryo culture, stating the recalled media does the opposite of its intended use, creating a “risk to health” due to “impaired embryo development prior to the blastocyst stage.” *Id.* ¶ 7. Plaintiff suffered incredible emotional distress following the destruction of her precious embryos. *Id.* ¶ 81.

Given the sensitive nature of her claims, Plaintiff filed her complaint using the random initials “A.A.” to protect her privacy. Plaintiff seeks only the protection of anonymity in public filings in this case. Plaintiff intends to move to relate this case to the matter *E.F. and G.H. v. CooperSurgical, Inc. et al.*, No. 4:24-cv-00643-JST, where the parties in the related actions have stipulated that Plaintiffs may proceed under pseudonyms under a protective order. See Dkt. 43 at p.6 (Joint Case Management Conference Statement and Proposed Order); Dkt. 43-1 (Stipulation and [Proposed] Order Re: Plaintiffs Who Wish to Proceed Anonymously); Dkt. 38 (Stipulated Protective Order). Upon this case being related to these other related actions, Plaintiff intends to make her identity known to Defendants.

1 **III. LEGAL STANDARD**

2 The Ninth Circuit instructs that a party “may preserve his or her anonymity in judicial
 3 proceedings in special circumstances when the party’s need for anonymity outweighs prejudice to
 4 the opposing party and the public’s interest in knowing that party’s identity.” *Doe 1 Thru XXIII*
 5 *v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). Specifically, parties are allowed
 6 to use pseudonyms “when nondisclosure of the party’s identity ‘is necessary . . . to protect a
 7 person from harassment, injury, ridicule or personal embarrassment.’” *Id.* at 1067-68 (quoting
 8 *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1981)). The district court’s decision to grant
 9 or deny an application to proceed anonymously is reviewed for abuse of discretion. *Id.* at 1069.

10 “When a party requests ‘Doe’ status, the factors to be ‘balance[d] . . . against the general
 11 presumption that parties’ identities are public information,’ are: ‘(1) the severity of the threatened
 12 harm; (2) the reasonableness of the anonymous party’s fears; and (3) the anonymous party’s
 13 vulnerability to such retaliation.’” *Doe v. Ayers*, 789 F.3d 944, 945 (9th Cir. 2015) (quoting
 14 *Advanced Textile*, 214 F.3d at 1068) (internal citation omitted). Further, where “[the plaintiff’s]
 15 identity is known to the defendant, proceeding anonymously would not [] intrude on the
 16 defendant’s rights,” and only “the right of public access to court proceedings” is weighed against
 17 the privacy rights or other overriding interest of the plaintiff. *Dep’t of Fair Emp. & Hous. v.
 18 Superior Ct. of Santa Clara Cnty.*, 82 Cal. App. 5th 105, 110 (2022).

19 Courts in this District allow the use of pseudonyms in cases involving the ““sensitive and
 20 highly personal”” area of “human sexuality.” *Jane Roes 1-2 v. SFBSC Mgmt., LLC*, 77 F. Supp.
 21 3d 990, 991-994 (N.D. Cal. 2015) (collecting cases and stating that this District “has considered
 22 ‘social stigmatization’ among the most compelling reasons for permitting anonymity”). *Advanced*
 23 *Textile* specifically cited a case where the “personal nature of pregnancy” justified allowing the
 24 plaintiff to proceed under a pseudonym. 214 F.3d at 1068 (citing *Doe v. Deschamps*, 64 F.R.D.
 25 652, 653 (D. Mont. 1974) (permitting anonymity in abortion suit)). In addition, “[t]he Supreme
 26 Court has implicitly endorsed the use of pseudonyms to protect plaintiffs’ privacy,” in particular
 27 where the case involved human sexuality and reproductive treatment and rights. *Advanced*

1 *Textile*, 214 F.3d at 1067 n.9 (citing *Roe v. Wade*, 410 U.S. 113 (1973) (abortion); *Doe v. Bolton*,
 2 410 U.S. 179 (1973) (abortion); *Poe v. Ullman*, 367 U.S. 497 (1961) (birth control)).

3 **IV. ARGUMENT**

4 Given the highly sensitive and personal nature of Plaintiff's allegations, the public's
 5 minimal interest in knowing her identity, and the lack of prejudice to Defendants, Plaintiff should
 6 be permitted to proceed anonymously.

7 **A. Plaintiff's Need for Anonymity.**

8 Here, Plaintiff's privacy concerns regarding her medical history, fertility treatments, and
 9 reproductive efforts justify anonymity. The private information at issue in this case is "sensitive
 10 and highly personal"; thus, the use of pseudonyms is "necessary . . . to protect [Plaintiff] from
 11 harassment, injury, ridicule or personal embarrassment." *Advanced Textile*, 214 F.3d at 1067-68.
 12 Revealing Plaintiff's identity in this matter could lead her to further emotional distress and/or
 13 result in social stigmatization due to the sensitive nature of her claims, which involve her
 14 reproductive choices, sexuality, and medical history. *See SFBSC Mgmt., LLC*, 77 F. Supp. 3d at
 15 991 (disclosing private details related to "the field of sexuality" would expose plaintiffs to social
 16 stigma); *Doe v. Hartford Fire Ins. Co. Emple.* Income Prot. Plan, No. 2:17-cv-01714-KJM-EFB,
 17 2017 U.S. Dist. LEXIS 147786, at *3 (E.D. Cal. Sep. 11, 2017) (allowing plaintiff to proceed
 18 anonymously because "[s]hielding plaintiff's identity will prevent unwarranted publication of
 19 details related to a woman's infertility and a minor child's conception and gestation.").

20 Courts have thus allowed plaintiffs in fertility-related matters to proceed anonymously.
 21 For example, in the recent *In re Pacific Fertility Center Litigation* case in this District, dozens of
 22 fertility patients whose eggs and embryos were damaged in a cryogenic storage tank failure were
 23 permitted to proceed using pseudonyms throughout all pretrial proceedings. *See e.g.*, 18-cv-
 24 01586-JSC, Dkt. 691 (N.D. Cal. Feb. 18, 2021). Here, just as in the *Pacific Fertility Center* cases,
 25 "Plaintiffs only request[ed] sealing of their identities," but not the number of eggs or embryos
 26 they had lost or other information derived from their medical records. *A.B. v. Pacific Fertility*
 27 *Center*, 441 F. Supp. 3d 902, 907 (N.D. Cal. 2020). The court granted plaintiffs request for
 28 anonymity in pretrial proceedings, noting it was a "narrowly tailored request." *Id.*

1 Indeed, at least twenty other cases have been filed in this district against Defendants
 2 regarding their defective embryo culture media, and in nearly all of these cases, the Plaintiffs filed
 3 their complaints using pseudonyms.¹

4 **B. The Public's Interest in Anonymity.**

5 In contrast, the public's interest in knowing Plaintiff's identity is minimal. Plaintiff's
 6 anonymity will not prevent the public from evaluating the issues in this case, nor will it inhibit
 7 the Court's ability to resolve the matters at issue. *See Advanced Textile*, 214 F.3d at 1068-69
 8 ("Party anonymity does not obstruct the public's view of the issues joined or the court's
 9 performance in resolving them.") (quoting *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir.1981)).
 10 Here, even if Plaintiff remains anonymous, the public and the court will know all the facts of the
 11 case, the claims at issue, and the legal issues involved. The public can discern the allegations of
 12 Defendants' wrongdoing—its manufacture and sale of a defective embryo media—withou
 13 knowing Plaintiff's identity. *See Advanced Textile*, 214 F.3d at 1073, n.15 ("we fail to see[] how
 14 disguising plaintiffs' identities will obstruct public scrutiny of the important issues in this case");
 15 *Doe v. United of Omaha Life Ins. Co.*, No. 23-cv-02307-JST, 2023 U.S. Dist. LEXIS 146511, at
 16 *3 (N.D. Cal. Aug. 21, 2023) ("Here, Plaintiff's identity 'appears to have no bearing on the
 17 resolution of the issues,' and so 'a pseudonym will not impede public access to the substance of
 18

19

20

21 ¹ *E.F. et al v. CooperSurgical, Inc. et al*, 4:24-cv-00643-JST (N.D. Cal.); *Q.R. et al v. CooperSurgical, Inc. et al*, 3:24-cv-00689 (N.D. Cal.); *I.J. et al v. CooperSurgical, Inc. et al*, 3:24- cv-00693 (N.D. Cal.); *M.N. et al v. CooperSurgical, Inc. et al*, 3:24-cv-00696 (N.D. Cal.); *Walden et al v. The Cooper Companies, Inc. et al*, 4:24-cv-00903 (N.D. Cal.); *A.B. et al v. CooperSurgical, Inc. et al*, 4:24-cv-01061 (N.D. Cal.); *J.B. et al v. CooperSurgical, Inc. et al*, 3:24-cv-01085 (N.D. Cal.); *CLF001 et al v. CooperSurgical, Inc. et al*, 3:24-cv-01192 (N.D. Cal.); *CLF003 et al v. CooperSurgical, Inc. et al*, 3:24-cv-01193 (N.D. Cal.); *CLF005 et al v. CooperSurgical, Inc. et al*, 3:24-cv-01194 (N.D. Cal.); *F.G. et al v. CooperSurgical, Inc. et al*, 4:24-cv-01261 (N.D. Cal.); *J.S. et al v. CooperSurgical, Inc. et al*, 3:24-cv-01353 (N.D. Cal.); *J.K. et al v. CooperSurgical, Inc. et al*, 3:24-cv-01680 (N.D. Cal.); *Woods et al v. CooperSurgical, Inc. et al*, 4:24-cv-01745 (N.D. Cal.); *M.N. et al v. CooperSurgical, Inc. et al*, 4:24-cv-01853 (N.D. Cal.); *R.S. v. CooperSurgical, Inc. et al*, 4:24-cv-02031-JST (N.D. Cal.); *N.O. et al v. CooperSurgical, Inc. et al*, 4:24-cv-02042 (N.D. Cal.); *Oxendine et al v. CooperSurgical, Inc. et al*, 4:24-cv-02168 (N.D. Cal.); *O'Brien. et al v. CooperSurgical, Inc. et al*, 4:24-cv-02580-DMR (N.D. Cal.); *A.F. et al v. CooperSurgical, Inc. et al*, 4:24-cv-02610 (N.D. Cal.).

1 the proceedings.””) (quoting *Doe v. County of El Dorado*, No. 2:13-CV-01433-KJM, 2013 WL
 2 6230342, at *6 (E.D. Cal. Dec. 2, 2013)).

3 **C. The Lack of Prejudice to Defendants.**

4 Finally, Plaintiff’s need for anonymity does not present any prejudice to Defendants.
 5 Plaintiff does not seek to prevent Defendants from knowing her identify, but rather, only seeks to
 6 shield her identity from the public. Courts have found that where defendants have access to
 7 plaintiffs’ identities, there is no prejudice. *See, e.g., Doe v. City & Cty. of San Francisco*, No. 16-
 8 CV-06950-KAW, 2017 WL 1508982, at *2 (N.D. Cal. Apr. 27, 2017) (“Notably, Defendants
 9 identify no prejudice to allowing Plaintiff to proceed under a pseudonym, particularly where
 10 Defendants are aware of Plaintiff’s real name.”); *Heineke v. Santa Clara Univ*, 2017 WL
 11 6026248, at *23 ((N.D. Cal. Dec. 5, 2017) (finding no prejudice “especially” where the party
 12 knows Doe’s true identity). Here, Plaintiff will disclose her identity to Defendants, so there is no
 13 prejudice.

14 **V. CONCLUSION**

15 For the foregoing reasons, Plaintiff respectfully requests that the Court permit her to
 16 proceed with this action anonymously.

17
 18 Dated: May 3, 2024

/s/ Sarah R. London

19 Sarah R. London (State Bar No. 267083)

slondon@lchb.com

20 Tiseme G. Zegeye (State Bar No. 319927)

tzegeye@lchb.com

21 Caitlin M. Woods (State Bar No. 335601)

cwoods@lchb.com

22 **LIEFF CABRASER HEIMANN & BERNSTEIN,
LLP**

23 275 Battery Street, 29th Floor

San Francisco, CA 94111-3339

24 Telephone: 415.956.1000

Facsimile: 415.956.1008

25

26

27

28

1 Hannah R. Lazarz (*pro hac vice forthcoming*)
2 hlazarz@lchb.com
3 **LIEFF CABRASER HEIMANN & BERNSTEIN,**
4 **LLP**
5 222 2nd Avenue South, Suite 1640
6 Nashville, TN 37201-2379
7 Telephone: 615.313.9000
8 Facsimile: 615.313.9965

9
10 *Attorneys for Plaintiff A.A.*

11 2995384.1

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28